

CANDIE M. DIBBLE, WSBA #42279
Assistant Attorney General
Office of the Attorney General
Corrections Division
1116 West Riverside Avenue, Suite 100
Spokane, WA 99201-1106
(509) 456-3123

Honorable Thomas O. Rice

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

JOHN DOE 1; JOHN DOE 2; JANE
DOE 1; JANE DOE 2; JANE DOE 3;
and all persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS;
STEPHEN SINCLAIR,

Defendants,

and

BONNEVILLE INTERNATIONAL,
THE MCCLATCHY COMPANY, and
ANDREA KELLY,

Interested Parties.

NO. 4:21-cv-05059-TOR

STATEMENT OF FACTS IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION

STATEMENT OF FACTS

1. The Department recognizes the unique challenges of managing the transgender, intersex and gender non-conforming inmate population in a penological

1 setting. Department Policy 490.700, Transgender, Intersex, and/or Gender Non-
 2 Conforming Housing and Supervision, sets forth the procedures to ensure equitable
 3 treatment of transgender, intersex, and/or gender non-conforming individuals when
 4 determining housing, classification, programming and supervision. ECF No. 33,
 5 Attachment A

6 2. Inmates may voluntarily request accommodations based on their
 7 gender identity to include choice of preferred pronouns, preferred gender to conduct
 8 searches/urinalysis, confidentiality preference, and housing safety concerns. Inmates
 9 seeking these accommodations fill out and sign the DOC Preferences Request form
 10 which specifically reiterates that the inmate is making the request freely, voluntarily
 11 and that the contents of the form are subject to the Public Records Act. The facility
 12 PREA compliance manager/specialist scans the form and a copy is maintained in
 13 OnBase, an electronic database. The form is maintained in a secured area of the
 14 OnBase network only accessible to limited staff which include the facility PREA
 15 compliance manager/specialist, the statewide PREA coordinator, classification staff,
 16 Deputy Director of Prisons and her office assistant. While the form itself may be
 17 maintained in a secured area with limited access to Department staff, the information
 18 on the form is not confidential. For example, if an inmate housed at a male facility
 19 specifically requests preferred pronouns such as she, her, or Miss, this information is
 20 provided to custody staff and volunteers by the inmate and/or the housing unit
 21 supervisors with the expectation that all staff use the preferred pronouns unless the
 22 use would implicate security or safety concerns. ECF No. 33, Attachment B.

1 3. To ensure proper housing placement, individuals who identify as
2 transgender, intersex, and/or gender non-conforming will have their housing
3 placement reviewed every six months. Information related to reviews that
4 recommend an individual's transfer to another facility is documented on the Housing
5 Protocol for Transgender, Intersex, and Gender Non-Conforming Individuals form.
6 The form is maintained in a secured area of the OnBase network only accessible to
7 limited staff which include the facility PREA compliance manager/specialist, the
8 statewide PREA coordinator, classification staff, Deputy Director of Prisons and her
9 office assistant. ECF No. 33, Attachment C.

10 4. As part of the Deputy Director of Prison's duties in ensuring processes
11 are in place for the management of transgender, intersex, and gender non-conforming
12 individuals and to assist with the statewide PREA Coordinator's responsibility to
13 maintain a record of all transgender, intersex, and gender non-conforming
14 individuals, she maintains an active spreadsheet which lists all inmates in DOC
15 custody who have voluntarily identified as transgender, intersex, and gender non-
16 conforming by filling out the Preference Form. In addition to the inmate's name, the
17 spreadsheet contains such information as the inmate's DOC identification number,
18 current facility location, date they arrived to that location, preferred pronouns, search
19 preference, date(s) of housing reviews, and the computer pathway containing the link
20 to the most recent housing review record. At any time, an inmate can ask to revoke
21 their Preference Form and no longer self-identify as transgender, intersex, or gender
22 non-conforming. The tracking spreadsheet is maintained in a secured area of the

agency's SharePoint network and accessible to limited staff which include the facility PREA compliance manager/specialist, the statewide PREA coordinator, Deputy Director of Prisons and her office assistant. ECF No. 33, Attachment D.

5. The Department does not keep separate statistical information related to the number of inmates who identify as transgender, intersex, and gender non-conforming nor does it maintain specific statistical information related to the transfer of these inmates from one prison facility to another. Information to answer statistical information would likely come from several document sources including use of the tracking spreadsheet, preference request forms and housing review forms. ECF No. 33.

6. As of April 13, 2021, there are 149 inmates who identify as intersex, transgender or gender non-conforming. The following is a breakdown of housing locations for these individuals according to the information maintained in the tracking spreadsheet with the number contained in parenthesis indicating the number of inmates (53) who requested their information remain confidential from others according to their signed preference forms:

Prison Facility	Number of Inmates
Airway Heights Corrections Center	22 (2)
Washington Corrections Center	5 (3)
Washington Corrections Center for Women	30 (13; 8 of which request their information remain confidential also

1	Prison Facility	Number of Inmates
2		request preferred pronouns he/him/his)
3		
4	Stafford Creek Corrections Center	29 (9; 4 of which request their information remain confidential also request preferred pronouns she/her/hers)
5		
6	Coyote Ridge Corrections Center	9 (2)
7		
8	Washington State Penitentiary	11 (6; 2 of which request their information remain confidential also request preferred pronouns she/her/hers)
9		
10	Monroe Correctional Complex	40 (16; 11 of which request their information remain confidential also request preferred pronouns she/her/hers)
11		
12		
13	Clallam Bay Corrections Center	3 (3)
14	Mission Creek Corrections Center	1

7. Three inmates have been transferred from a Washington state Department of Corrections male prison facility to the Washington Corrections Center for Women since January 1, 2021. Their preference request forms indicate the following information:

Inmate	Request Gender Identity Confidential	Preferred Pronouns
1	Yes	Her, she, miss, girl, woman, female
2	No	She, her, Ms.

Inmate	Request Gender Identity Confidential	Preferred Pronouns
3	Yes	She, Her, Hers

8. There are four additional individuals who were assigned male at birth currently housed at the Washington Corrections Center for Women. Their preference request forms indicate the following information:

Inmate	Request Gender Identity Confidential	Preferred Pronoun
4	Yes	She
5	No	Transfemale
6	No	She, hers
7	No	She, her, hers

9. There have been no incarcerated individuals who have transferred from the Washington Corrections Center for Women to a Washington state Department of Corrections male prison facility since January 1, 2021. ECF No. 33.

10. There is currently one individual assigned female at birth who is housed in a Washington state Department of Corrections male prison facility, Monroe Correctional Complex. His preference form indicates he does not request that his information be maintained confidential from others. ECF No. 33.

11. In order to determine the number of housing reviews and the decisions of those reviews, with recommendations regarding transfer to/from a Washington state Department of Corrections male prison facility to/from the Washington Corrections Center for Women, the Department would have to conduct a “hand search” of all housing reviews stored in each individual’s OnBase record in their

1 OMNI electronic file. The Department has a log that tracks all housing reviews and
 2 the final decision. However, there is no official record that breaks down what the
 3 recommendation is from the facility Multi-Disciplinary Team and if that was the final
 4 decision from Headquarters, or if the Headquarters decision was contrary to the
 5 facility Multi-Disciplinary Team recommendation. The decision just notes the final
 6 decision – such as “maintain placement at SCCC” or “transfer to SCCC” or “transfer
 7 to WCCW.” Records containing this information could include an individual’s bi-
 8 annual housing review forms, Transgender, Intersex, and Gender Non-Conforming
 9 Housing Multi-Disciplinary Team forms and/or any notes maintained in OMNI.
 10 ECF No. 33.

11 12. Any information related to an individual’s request, scheduling and
 12 receipt of gender affirming surgery would be maintained in the individual’s medical
 13 and mental health records. An individual’s medical and mental information is
 14 considered protected health information and is only shared with custody staff on a
 15 very limited basis to the extent that it is necessary to ensure access to
 16 accommodations or other security concerns. For an example, an individual’s request
 17 or receipt of gender affirming surgery would not be shared with custody staff.
 18 However, if the individual needed access to accommodations related to the surgery,
 19 such as access to durable medical equipment or bodily search requirements, that
 20 specific and limited information would be shared with necessary staff. ECF No. 33,
 21 Attachment E.

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1 13. Requests for records related to an incarcerated individual's sentence
2 and housing transfer information would likely be provided through the individual's
3 legal face sheet. The legal face sheet contains data of basic information related to
4 their custody including demographics, emergency contact, sentence, housing,
5 infraction, custody level, diet, earned time credit, and custody facility plan
6 information. ECF No. 33.

7 14. On March 12, 2021, the Department received a request through the
8 online portal from Stacia Glenn at stacia.glenn@thenewstribune.com. The request
9 specifically sought: "1. The number of transgender or gender non-conformist inmates
10 who have been transferred to the Washington Corrections Center for Women (WCCW)
11 in recent months. 2. The dates these incarcerated individuals were transferred to
12 WCCW and the facilities they were transferred from. 3. The names and ages of these
13 incarcerated individuals and the convictions they are currently serving time for. 4. The
14 number of complaints and or disciplinary actions taken against these incarcerated
15 individuals and any records associated with those complaints or disciplinary actions."
16 The request was assigned tracking number P-19274. ECF No. 34, Attachment B.

17 18. On March 16, 2021, the Department received a request through the
18 online portal from Aaron Granillo at agranillo@bonneville.com. The request
19 specifically sought "1. The number of transgender inmates currently housed in DOC
20 prison facilities. 2. The number of transgender inmates who are currently waiting to be
21 transferred to a prison matching their sexual identity. 3. The number of inmates
22 evaluated and confirmed by DOC to be transgendered. 4. The number of transfer

1 requests made by transgender individuals that have been approved and denied.
 2 5. Records explaining the reasoning for any denial of a transgendered incarcerated
 3 individuals request for transfer. 6. The number of transgendered incarcerated
 4 individuals who have requested gender reassignment surgery. 7. The number of
 5 transgendered incarcerated individuals who have requested and received gender
 6 reassignment surgery. 8. The number of transgendered incarcerated individuals who are
 7 currently scheduled for gender reassignment surgery. 9. The names of all transgendered
 8 incarcerated individuals who have requested, received or are scheduled for gender
 9 reassignment surgery. 10. Any infractions, complaints, reports, concerns submitted by
 10 other staff or other incarcerated individuals regarding the following individuals:
 11 Princess Zoe Marie Andromeda-Love, DOC #328585; Donna Perry, DOC #400378;
 12 William E. Martin Jr., DOC #401212; Fernando F. Chirinos, DOC #327881; Bryan P.
 13 Kim, DOC #315649; John L. Forrester, DOC #256322.” The request was assigned
 14 tracking number P-19375. ECF No. 34, Attachment C.

15 19. On March 19, 2021, the Department received a request through the
 16 online portal from Andrea Kelly at akelly617@icloud.com. The request specifically
 17 sought “1. The number of transgender individuals currently incarcerated broken out by
 18 facility location. 2. Number of incarcerated individuals who have been transferred from
 19 a men’s facility to a women’s facility since January 1, 2021. 3. The number of male
 20 incarcerated individuals who identify as female, non-binary or any other gender identity
 21 who are currently housed at a Women’s prison facility. 4. The number of incarcerated
 22 individuals who have transferred from a Women’s facility to a Men’s facility since

1 January 1, 2021. 5. The number of female incarcerated individuals who identify as male,
 2 non-binary or any other gender identity who are currently housed in a Men's prison
 3 facility." The request was assigned tracking number P-19460. ECF No. 34,
 4 Attachment D.

5 20. The Department is in the process of identifying and gathering responsive
 6 records to all three requests. The Department has already identified and is prepared to
 7 provide a first installment of records responsive to P-19375 which contain 309 pages of
 8 infraction records for inmate Princess Zoe Marie Andromeda-Love, DOC #328585.
 9 ECF No. 34.

10 21. When reviewing records responsive to the requests, the Department
 11 determines and applies redactions and withholdings under RCW 42.56 or other
 12 applicable statutes. The Department is currently unaware of any provision under
 13 RCW 42.56 or any other statute which specifically exempts an individual's gender
 14 identity from public disclosure. ECF No. 34.

15 22. With respect to DOC 02-420 Preferences form, DOC 02-384 Housing
 16 Protocol for Transgender, Intersex and Gender Non-Conforming Individuals form, the
 17 Prison Risk Assessment, Prison Rape Elimination Act investigation reports, legal face
 18 sheets, infraction reports or grievance documents, none of these forms/documents are
 19 withheld in their entirety under RCW 42.56. While the form/document may be
 20 determined not to be withheld in its entirety, forms/documents could contain content
 21 that may be redacted under RCW 42.56. For example, if a legal face sheet was identified
 22 as responsive to a public records request, the individual's social security number, victim

1 information and other content exempt under RCW 42.56 would be redacted before
2 providing the record to the requestor. ECF No. 34.

3 23. In reviewing the tracking spreadsheet for inmates who identify as
4 transgender, intersex and gender non-conforming, ECF No. 33, Attachment D, the
5 document does not contain information that would be redacted or withheld under RCW
6 42.56. ECF No. 34.

7 24. Without a signed authorization, any record contained in an inmate's
8 medical file, which also includes records related to their mental health and dental
9 treatment, would be withheld in their entirety under RCW 70.02. In addition, inmate
10 medical, mental health, dental diagnosis and treatment information would be redacted
11 if the information was included by a provider and contained outside of the inmate's
12 medical record. For example, if an inmate's DOC 02-384 Housing Protocol for
13 Transgender, Intersex and Gender Non-Conforming Individuals form included
14 information related to the inmate's gender dysphoria diagnosis and treatment or genital
15 anatomy from a mental health or medical provider, that information would be redacted
16 from the document under RCW 70.02 before providing the record to the requestor in
17 response to a PRA request. However, if the inmate included the information voluntarily
18 in a grievance or some other record, the Department would not apply a redaction in
19 response to a PRA request. ECF No. 34.

20 25. The Department is unaware of any exemptions under RCW 42.56 or
21 other statute which would permit redaction of information related to an inmate's sexual
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orientation, sexual history, or history of alleged sexual victimization if contained outside of an inmate's medical record. ECF N0. 34.

26. Records currently identified as responsive to the PRA requests:

P-19375: Requestor Aaron Granillo

Requested Records	Responsive Records
1. The number of transgender inmates currently housed in DOC prison facilities.	Tracking Spreadsheet
2. The number of transgender inmates who are currently waiting to be transferred to a prison matching their sexual identity.	Housing Review/MDT form
3. The number of inmates evaluated and confirmed by DOC to be transgendered.	Tracking Spreadsheet
4. The number of transfer requests made by transgender individuals that have been approved and denied.	Housing Review/MDT Forms
5. Records explaining the reasoning for any denial of a transgendered incarcerated individuals request for transfer.	Housing Review/MDT Forms
6. The number of transgendered incarcerated individuals who have requested gender reassignment surgery.	Record would be contained in the inmate's medical file and not subject to public disclosure without a signed release under RCW 70.02.
7. The number of transgendered incarcerated individuals who have requested and received gender reassignment surgery.	There are no documents responsive to this request.
8. The number of transgendered incarcerated individuals who are currently scheduled for gender reassignment surgery.	Record would be contained in the inmate's medical file and not subject to public disclosure without a signed release under RCW 70.02.
9. The names of all transgendered incarcerated individuals who have requested, received or are scheduled for gender reassignment surgery.	Record would be contained in the inmate's medical file and not subject to public disclosure without a signed release under RCW 70.02.

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Requested Records	Responsive Records
10. Any infractions, complaints, reports, concerns submitted by other staff or other incarcerated individuals regarding the following individuals: Princess Zoe Marie Andromeda-Love, DOC 328585 Donna Perry, DOC 400378 William E. Martin Jr., DOC 401212 Fernando F. Chirinos, DOC 327881 Bryan P. Kim, DOC 315649 John L. Forrester, DOC 256322	Infraction records, PREA investigation records
P-19274: Requestor Stacia Glenn	
Requested Docs	Responsive Records
1. The number of transgender or gender non-conformist inmates who have been transferred to the Washington Corrections Center for Women (WCCW) since January 1, 2020.	Housing Review/MDT forms of 4 individuals
2. The dates these incarcerated individuals were transferred to WCCW and the facilities they were transferred from.	Legal Face Sheet
3. The names and ages of these incarcerated individuals and the convictions they are currently serving time for.	Legal Face Sheet
4. The number of complaints and or disciplinary actions taken against these incarcerated individuals and any records associated with those complaints or disciplinary actions.	Infraction records, PREA complaints
P-19460: Requestor Andrea Kelley	
Requested Docs	Responsive Docs
1. The number of transgender individuals currently incarcerated broken out by facility location.	Tracking Spreadsheet

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Requested Docs	Responsive Docs
2. Number of incarcerated individuals who have been transferred from a men's facility to a women's facility since January 1, 2021.	Housing Review/MDT forms of 3 individuals
3. The number of male incarcerated individuals who identify as female, non-binary or any other gender identity who are currently housed at a Women's prison facility.	Preference form of 7 individuals
4. The number of incarcerated individuals who have transferred from a Women's facility to a Men's facility since January 1, 2021.	There are no documents responsive to this request.
5. The number of female incarcerated individuals who identify as male, non-binary or any other gender identity who are currently housed in a Men's prison facility.	Housing Review/MDT form of 1 individual

RESPECTFULLY SUBMITTED this 22nd day of April, 2021.

ROBERT W. FERGUSON
Attorney General

s/ Candie M. Dibble
CANDIE M. DIBBLE
WSBA #42279
Assistant Attorney General
Corrections Division
1116 West Riverside Avenue, Suite 100
Spokane, WA 99201-1106
(509) 456-3123
Candie.Dibble@atg.wa.gov